

**DEPARTMENT OF VETERANS AFFAIRS**

# GOVERNMENT SHUTDOWN FAQs

**Frequently Asked Questions**

September 2023

**OFFICE OF THE CHIEF HUMAN CAPITAL OFFICER**

A close-up, vertical view of the American flag, showing the stars and stripes, positioned in the bottom right corner of the page.

The Office of the Chief Human Capital Officer (OCHCO) has prepared human resources guidance on shutdown furloughs (also called emergency furloughs). These Frequently Asked Questions (FAQ) respond to commonly asked questions and are not intended to replace Office of Personnel Management’s “Guidance for Shutdown Furloughs” but to assist human resources professionals in understanding and deploying activities related to executing an orderly shutdown furlough and related contingency planning activities.

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## Acronyms

AWOL	Absent Without Leave
AWS	Alternative Work Schedule
CG	Comptroller General
COOP	Continuity of Operations
COP	Continuation of Pay
DFAS	Defense Finance and Accounting Service
DOT	Department of Transportation
FAQ	Frequently Asked Questions
FEHB	Federal Employees Health Benefit
FMLA	Family Medical Leave Act
FLRA	Federal Labor Relations Authority
FSIP	Federal Service Impasses Panel
GS	General Schedule
HRO	Human Resources office
IPA	Intergovernmental Personnel Act
LWOP	Leave Without Pay
MSPB	Merit Systems Protection Board
OCHCO	Office of the Chief Human Capital officer
OMB	Office of Management and Budget
OPM	Office of Personnel Management
PCS	Permanent Change of Station
PIV	Personal Identity Verification
RIF	Reduction-in-Force
SES	Senior Executive Service
TSP	Thrift Savings Plan
ULP	Unfair Labor Practice
VCS	Veterans Canteen Services
VHA	Veterans Health Administration
VLTP	Voluntary Leave Transfer Program

# Frequently Asked Questions for Shutdown Furlough

## A. Introduction

### 1. What is a furlough?

There are two types of furloughs—a "shutdown" or "emergency" furlough and a "save money" furlough. In a "shutdown" furlough, the agency no longer has the necessary funds to operate and must shut down activities that are not excepted or exempt by Office of Management and Budget (OMB) standards. An employee is considered "furloughed" when they are placed in a temporary non-duty, non-pay status because of lack of funds.

For most employees, there are two basic categories of furloughs, each involving different procedures. A furlough of 30 calendar days or less is covered under 5 C.F.R. § 752, Adverse Action procedures. A furlough of more than 30 calendar days is covered under 5 C.F.R. § 351, Reduction in Force procedures. When a shutdown furlough lasts longer than 30 days, agencies should treat it as a second shutdown furlough and issue another adverse action or furlough notice. As such, all shutdown furlough activities would be governed by 5 C.F.R. § 752, Adverse Action procedures.

**NOTE:** Reduction-in-Force (RIF) furlough regulations and Senior Executive Service (SES) competitive furlough requirements are not applicable to shutdown or emergency furloughs because the ultimate duration of a shutdown furlough is unknown at the outset and is dependent entirely on Congressional action rather than agency action. The RIF furlough regulations and SES competitive furlough requirements, on the other hand, contemplate planned, foreseeable, money-saving furloughs that, at the outset, are planned to exceed 30 days.

### 2. How many persons will be impacted by the furlough?

The most recent contingency plan will be available on the [VA Office of the Chief Human Capital Officer's Contingency Planning Website](#). This site can be used to identify all furlough impacts. Most VA operations will continue without interruption in the event of a shutdown. Veterans and VA employees benefit from a wise Congressional appropriations strategy, which has provided advance appropriations to fund operations at the Veterans Health Administration (VHA) and the mandatory benefits paid to Veterans. In addition, certain programs meet legal requirements to continue performing their designated duties. These duties are classified as "excepted," and include such programs as benefits processing at the Veterans Benefits Administration; burial, scheduling of burials, and headstone and marker processing functions at the National Cemetery Administration; and certain information technology functions at the Office of Information and Technology. 96% of the VA workforce would continue operations in the event of a shutdown furlough.

### 3. What is the difference between an "excepted employee," an "emergency employee," and an "exempt employee?" (Note: an "excepted employee" is not to be confused with an employee in the excepted service.)

The term "*excepted employee*" refers to employees who are excepted from a furlough by law because they are (1) performing emergency work involving the safety of human life

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or the protection of property, (2) involved in the orderly suspension of agency operations, or (3) performing other functions exempted from the furlough.

The term "*emergency employee*" is used to designate those employees who must report for work in emergency situations—e.g., severe weather conditions, air pollution, power failures, interruption of public transportation, and other situations in which significant numbers of employees are prevented from reporting for work or require agencies to close all or part of their activities.

The term "*exempt employee*" is used to describe employees in funded organizations that are exempt from furlough. For example, presidential appointees who are not covered by the leave system in 5 U.S.C. § 63 are not subject to furlough because their salary is an obligation incurred by the year without consideration of hours of duty required, so they cannot be placed in a non-duty, non-pay status.

#### **4. What about employees who are neither "excepted" nor "exempt"?**

Employees who are funded through annual appropriations but are not designated as excepted are barred from working during a shutdown except to perform minimal activities as necessary to execute an orderly suspension of agency operations related to non-excepted activities. These employees will be furloughed.

#### **5. How will employees be notified whether they have been designated to be handling "excepted" functions or not?**

Employees will be notified of their exception status by their supervisor or a designated VA Senior Management Official.

#### **6. Are *all* employees who qualify as "emergency employees" for the purpose of weather emergencies considered to be "excepted employees" for the purpose of a shutdown furlough?**

Not necessarily. "Emergency employees" are those employees who must report for work in emergency situations—e.g., severe weather conditions, air pollution, power failures, interruption of public transportation, and other situations in which significant numbers of employees are prevented from reporting for work or require agencies to close all or part of their activities. Emergency employees are not automatically deemed excepted employees for purposes of shutdown furloughs.

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### **B. Furlough Activities**

#### **1. May employees conduct orderly shutdown activities remotely. May an agency provide an employee electronic notice of a furlough action?**

In many cases, orderly shutdown activities (including the distribution of furlough notices and, where necessary, the adjustment of voicemail and email messages to reflect the agency's operating status) may be conducted remotely. If the nature of an employee's shutdown activities are *de minimis* (i.e., can be completed in approximately 15 minutes) there does not need to be a telework agreement regarding such remote work. If electronic notifications of a furlough action are emailed to affected employees, it is

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recommended that the employee's name, address, and/or email address is on the decision notification so it is clear the employee is receiving personal notification. The requirement that the employee provide an email acknowledgment of receipt must be included in the body of the electronic correspondence. If a requested acknowledgment of receipt of an email notification is not received, a paper copy of the decision notification must be delivered to the employee at their home address by registered mail with a return receipt requested.

Employees should be informed as soon as practicable if they are subject to the furlough and be provided a contact person who can answer questions related to this issue. Employees' current personal email addresses and phone numbers should also be gathered to effectively communicate when to return from furlough.

Organizations with bargaining unit employees are reminded that they must provide notice and opportunity to bargain over negotiable procedures and appropriate arrangements to any unions representing their employees. Please refer to the Federal Labor Relations Authority (FLRA) for guidance regarding notification to the unions.

### **2. What are an agency's regulatory obligations to provide Merit Systems Protection Board (MSPB) appeal information in the adverse action furlough decision notice?**

As summarized in the [April 11, 2013 Federal Register](#), an agency must satisfy the obligation to provide a copy of the MSPB appeal form when issuing a decision notice. Providing this [MSPB appeal form](#) electronically will typically satisfy the requirement of ensuring that employees subject to a decision appealable to MSPB will have effective access to the MSPB regulations and appeal form. This link is included in furlough notices that will be given to affected employees. In addition, information regarding an employee's right to appeal is also included in the furlough notices provided by the OCHCO.

### **3. What procedural rights apply to employees who are Veterans covered under 5 U.S.C. § 75 and 5 C.F.R. § 752 for a shutdown furlough?**

For a shutdown furlough, 5 U.S.C. § 7513 gives a covered Veteran employee the same procedural rights as other covered employees. Employees should consult with their servicing Human Resources Office (HRO) to determine whether they are covered by 5 U.S.C. § 7513 and what procedures may apply to them.

### **4. If an employee decides to challenge a shutdown furlough, from what point would the time for appeal to the MSPB run?**

Employees must file an appeal within 30 days after the effective date of their first furlough day or 30 days after the date of their receipt of the decision notice, whichever is later.

### **5. If, during a lapse in appropriations, Federal agencies are operating under an "unscheduled leave" policy because of emergency weather conditions, which employees should report for work?**

## Frequently Asked Questions for Shutdown Furlough

Excepted employees are required to report for work on time under these circumstances. Employees are reminded that, during a lapse in appropriations, all affected employees must be either (1) at work performing excepted activities (excepted employees) or (2) in furlough status (non-excepted employees). Therefore, agencies may change the status of employees as additional needs arise. Furthermore, if an excepted employee is unable to report for work because of emergency conditions, they must be placed in furlough status until they report for work.

**6. For furloughs necessitated by lapsed appropriations, is an agency required to provide 30 calendar days advance written notice and an opportunity to respond prior to issuing a decision to furlough?**

No. OPM's regulations provide for emergency adverse action furlough without the necessity for advance written notice proposing the action. 5 C.F.R. § 752.404(d)(2) provides:

*“The advance written notice and opportunity to answer are not necessary for furlough without pay due to unforeseeable circumstances, such as sudden breakdowns in equipment, acts of God, or sudden emergencies requiring curtailment of activities.”*

OPM's position that this regulation applied to lapsed appropriations was upheld by the Federal Circuit in *Horner v. Andrzejewski et. al.*, 811 F.2d 571 (Fed. Cir. 1987). Similarly, under 5 C.F.R. § 359.806(a), the full notice period for career SES appointees may be shortened or waived in the event of unforeseeable circumstances such as sudden emergencies requiring immediate curtailment of activities.

**7. In the event of lapsed appropriations, can an employee be furloughed without first receiving a written notice of decision to furlough?**

Yes. While an employee ultimately must receive a written notice of decision to furlough, it is not required to be given prior to effecting the furlough. Issuance of prior written notice is preferable, but when it is not feasible, any reasonable notice (email, telephone or verbal) is permissible.

**8. What information should be included in the notice of decision when no advance notice is issued?**

The notice must specify the reason for the furlough and state that the usual 30 calendar days advance notice was not possible due to the emergency requiring curtailment of agency operations. If some employees in a competitive level will not be furloughed because they are performing one of the excepted activities defined by OMB guidelines, we recommend a statement such as the following:

*“If employees are being retained in your competitive level, they are required for orderly suspension of agency operations, or they are performing one of the excepted activities defined by the Office of Management and Budget.”*

The notice must include a statement of applicable appeal and grievance rights. Agencies are reminded that adverse action coverage for excepted service employees was

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substantially expanded by the Civil Service Due Process Amendments of 1990 (P.L. 101-376). If a copy of the MSPB appeal form is not attached to the decision notice, the notice should include information on how to obtain a copy of the form.

### 9. Who develops the furlough notices/letters that are distributed to employees?

Furlough notices have been developed for the Department and can be found on the VA [Office of the Chief Human Capital Officer's Contingency Planning Website](#). These templates are intended to simplify and streamline necessary communications.

### 10. Who signs the furlough notices?

A furlough of more than one day is considered an adverse action (major adverse action for title 38). Therefore, whoever signs as the deciding official for an adverse action will also sign as the deciding official for the furlough letter(s).

**Table 1: Furlough Deciding Officer by Organization Type**

TYPE	LOCATION	DECIDING OFFICIAL
Title 5/Hybrid	Field Facilities (Non-Centralized positions)	Facility Director
Title 5/Hybrid	VA Central Office	Executive Director or equivalent level or higher
Title 5/Hybrid	Positions Centralized to the Secretary	Secretary or designee
Title 38	Below Service Chief Level (Non-Centralized Field Facility Employees)	Facility Director
Title 38	Service Chief and Equivalent Positions (Non-Centralized Field Facility Employees)	Facility Director
Title 38	Chief of Staff Senior Medical Officer (Non-Centralized Field Facility Employees)	Network Director
Title 38	Medical Center Directors/Positions in VACO	Under Secretary for Health or designee

### 11. How will employees receive notification of the furlough?

VA will try to conduct an orderly suspension of agency operations on the first day of the shutdown and will try to provide every employee impacted by the furlough with a notice (telephone, written, or email).

Supervisors will work with the servicing HRO to ensure that notices are provided to all furloughed employees including those that are determined to be excepted.

### 12. What information should be retained in a furlough folder?

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The servicing HRO is responsible for maintaining the furlough folder for up to two years for reporting purposes. The furlough folder should contain the following: (1) a copy of the written furlough notice (dated and signed by deciding official and employee); (2) source documentation that confirms the employee was notified of the furlough and acknowledges the employee's receipt (i.e., copies of email communication, copies of read and delivery receipts, copies of U.S. mail, return receipt), if applicable; and (3) SF-50 "Notification of Personnel Action," for furloughed employees.

### **13. What forms of communication should an agency consider in effecting a furlough?**

Considering the uncertain and changing circumstances surrounding furlough, efforts should be made to assure employees are provided with up-to-date and accurate information as warranted. This may be done through effective union-management communication, employee briefings, periodic bulletins, newsletters, or other means available.

### **14. How should the decision letter be framed if the agency has not set a specific number of furlough days in the proposal?**

While it is desirable to inform the affected employee of a specific number of days in the decision letter, the agency needs only to state the maximum time that may be involved so employees have as much information as possible if they choose to appeal.

### **15. After a furlough begins, how long will VA have to issue notices and shut down agency operations?**

Phase-down activities should be completed during the first 4 hours of the workday. ([OMB Bulletin No. 91-02, Agency Operations in the Absence of Appropriations, dated October 5, 1990.](#))

### **16. What procedures are applicable for probationers, employees under time limited appointments limited to one year or less in the competitive service, non-preference eligible employees in the excepted service with less than two years of continuous service and others not covered by 5 U.S.C. § 75?**

The VA servicing HRO should refer to 5 U.S.C. § 7511(a)(1) to ensure the employee is not entitled to due process and appeal rights. For those that do not meet this definition, there are no mandated procedures because there are no adverse action procedures for these employees; however, VA servicing HROs should ensure that all procedures required by negotiated agreements and internal personnel policies are followed. These employees will receive a notice that describes their designation during the furlough.

### **17. What about persons working for Federal agencies under mobility agreements pursuant to the Intergovernmental Personnel Act (IPA)?**

The specific authority for furloughing persons who are working under mobility agreements pursuant to the IPA, either inside the Federal Government or with other organizations, will depend on the nature of individual agreements, the status of the appointments, and/or the funding arrangements for the assignments. As a general rule,

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the following principles are applicable in determining whether to furlough personnel on IPA mobility assignments:

- a. Personnel from non-Federal organizations on appointments to the Federal Government are subject to furlough in the same manner as other employees.
- b. Personnel on detail to Federal agencies from non-Federal organizations may continue working, provided that the non-Federal organizations pay the total costs of the detail.
- c. Personnel on detail to Federal agencies from non-Federal organizations that share part of the costs of detail may continue to work if the Federal portion of the cost was obligated from prior appropriations at the time of the IPA mobility agreements. In the event a furlough takes place in the second year of the agreement at which time no funds are appropriated, the assignment should be terminated.
- d. Personnel on detail to Federal agencies from non-Federal organizations that do not pay or share the costs of the detail are subject to furlough in the same manner as other employees.

### **18. Would employees who are detailed or assigned outside the agency during part, or the entire period, of furlough be subject to furlough?**

Detailed employees remain officially assigned to their permanent positions during the detail. During a shutdown furlough, each agency will determine the status of their employees on detail within the agency or to another agency. Home and receiving agencies should carefully consult about what activities are appropriate for a detailee to perform during a funding lapse to ensure that the activities are consistent with the reasons why the agency designated them as “excepted.”

Employees on a reimbursable detail from VA would not be subject to furlough due to lack of funds if full reimbursement continued. If reimbursement were reduced or eliminated, the employee would be subject to furlough. Agencies may prorate the required furlough time for employees being paid by the outside organization during only part of the furlough period.

Federal employees assigned to non-Federal organizations that are on leave without pay (LWOP) from their Federal positions may continue working.

### **19. Would employees whose positions are funded through reimbursements who service a customer who is funded be allowed to continue to work during the furlough?**

No activities will be continuing in support of funded customers unless they meet certain criteria. Depending on the legal authority of the reimbursement (i.e., Appropriations Act, Supply Fund, Economy Act), an office may or may not have the ability to continue operations. However, the ability to continue operations is dependent on whether the office receives the reimbursement from the funded customer in advance or in arrears. If such office received the reimbursement in advance (vs. in arrears), then its appropriations would not lapse, and it would be considered “funded.”

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### **20. How should an agency determine the number of furlough hours for alternative work schedule (AWS) employees during a "shutdown" or "emergency" furlough? Can an employee reschedule a non-workday that occurred during the furlough?**

Employees' work schedules are established in advance over periods of not less than one administrative workweek and reflect the actual work requirement (VA Directive 5011, paragraph 2e). While supervisors may change work schedules when it is known in advance that an employee is needed during specific days or hours other than what is scheduled in that administrative workweek (5 C.F.R. § 610.121(b)(2)), there is no authority for employees to reschedule their workweek because a scheduled non-workday will occur on a furlough day. When a non-workday occurs on a furlough day, the employee cannot reschedule the non-workday for use on an earlier or later day. In addition, facilities should consider pertinent terms of established labor agreements.

### **21. How would the agency schedule a furlough for part-time employees?**

Furlough of part-time employees must comply with the procedures of 5 C.F.R. § 752 or 351 if the employees are otherwise covered. In scheduling such furloughs, it would be equitable to compute the furlough days in the same proportion to those days scheduled for full-time employees, based on work schedules. (The hours of furlough might be computed as a percentage of the work schedule for full-time employees. For example, if an employee worked 64 hours a pay period, that would equate to 64/80 of a full-time work schedule, or 80%. This percent could then be multiplied by the number of hours a full-time employee is furloughed during a pay period.)

### **22. Are temporary employees eligible for furlough exceptions?**

Temporary employees are defined as employees on temporary appointments that are limited to one year or less. Temporary employees are treated the same as all other employee groups and are eligible for exception from furlough if the work of the position fits into one of the [OMB Predefined Exception Categories](#).

### **23. What about employees who work on a seasonal or intermittent basis?**

Intermittent employees are non-full-time employees without a regularly scheduled tour of duty. A facility recalls seasonal employees to duty at identified periods of the year in accordance with pre-established conditions. Whether a facility calls either group to work during a furlough period is discretionary to the facility.

### **24. What happens to employees who are scheduled to transfer or leave Federal service during the shutdown?**

Employees scheduled to transfer during the shutdown (either within VA or to another Federal agency) should contact the gaining facility HRO to notify them that they are currently employed by an agency that is in furlough status and to determine if the gaining facility will be able to onboard them as planned. If an employee separates during a lapse in appropriations, the lump-sum annual leave payment must be delayed until enactment of an appropriation that would allow the obligation and payment of funds for this purpose.

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### **25. What happens to new employees who are scheduled to enter on duty during the shutdown?**

The gaining HRO should notify new or transferring employees scheduled to enter on duty during the furlough of the agency's furlough status and that they may not be able to onboard as planned. The new or transferring employee would then have the option to wait until the funding is restored or choose to decline the offer of employment.

### **26. Will the Veterans Canteen Service (VCS) remain open during the shutdown?**

The VCS is a largely revolving fund activity with some support from appropriated funds. VCS activities will be maintained during any furlough period to support employees engaged in essential activities. Food type and amount would be predicated on the numbers of exempt and excepted personnel remaining in the building.

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## **C. Employment During Furlough**

### **1. May employees take other jobs while on furlough?**

Even while on furlough, an individual is an employee of the Federal Government. Therefore, the Executive Branch-wide standards of ethical conduct in 5 C.F.R. § 2635, which include rules on outside employment, continue to apply to employees on furlough. Additionally, there are statutes that prohibit certain outside activities. There are varying supplemental rules regarding the requirement for prior approval of outside employment, and some prohibit certain types of outside employment. Therefore, before engaging in outside employment, employees should review these regulations and then consult the Office of General Counsel (ethics officer) to learn if there are any VA-specific supplemental rules governing secondary external employment.

### **2. What happens to employees' benefits (e.g., retirement, health benefits, life insurance, leave) if they receive temporary appointments in another agency while furloughed?**

If, during a furlough, an employee receives a temporary appointment in another agency, their retirement, health benefits, life insurance, and leave should be handled as it would be in any other transfer of employment from one Federal agency to another. (See Comptroller General Opinion B-167975, September 1, 1970.)

### **3. May an employee volunteer to do their job on a non-pay basis during a furlough period?**

No. Unless otherwise authorized by law, an agency may not accept the voluntary services of an individual (31 U.S.C. § 1342). This requirement prohibits VA from accepting the voluntary services of its employees during a furlough.

### **4. May an employee telework while on non-pay status during a furlough?**

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No. While on furlough an employee is in a non-duty, non-pay status and cannot work on-site or telework.

### **5. What happens to non-excepted employees who voluntarily perform the duties of their job during the furlough?**

In accordance with the Antideficiency Act, it is unlawful to accept voluntary services for the United States or employ personal services not authorized by law except in cases of emergency involving the safety of human life or the protection of property.  
31 U.S.C. § 1342.

An officer or employee of the United States Government who violates 31 U.S.C. § 1342 (limitation on voluntary services), "may be subject to appropriate administrative discipline including, when circumstances warrant, suspension from duty without pay or removal from office" (31 U.S.C. § 1349(a)).

Additionally, in accordance with 31 U.S.C. § 1342, an officer or employee of the United States Government who "knowingly and willfully" violates (limitation on voluntary services), "may be fined not more than \$5,000, imprisoned for not more than 2 years, or both."

### **6. Can non-excepted employees perform work during the furlough period?**

No. In accordance with the Antideficiency Act, non-excepted employees are prohibited from performing work-related activities from outside of the office, including by mobile devices or remote computer connections.

### **7. Can a non-excepted employee use their government issued equipment (laptop, mobile phone, or iPad); read work-related emails; or communicate with contractors, employees, or external customers about work-related activities while they are furloughed?**

No. In accordance with the Antideficiency Act, non-excepted employees are prohibited from performing work-related activities while in furlough status.

### **8. May an employee work on a furlough day in exchange for taking a day off at another time for religious observances?**

No. The statute that permits employees to take compensatory time off for religious observances (5 U.S.C. § 5550(a)) does not authorize an agency to accept the voluntary services of any individual on a furlough day. Periods of time worked in exchange for taking time off for religious observances must be scheduled on non-furlough days.

### **9. Can Without Compensation (WOCs) employees continue to perform work during the shutdown?**

The supervising official should determine if the services provided by the WOC employee support an excepted or exempt activity and do not violate the law. In accordance with the Anti-Deficiency Act, it is unlawful to accept voluntary services for the United States,

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or employ personal services not authorized by law, except in cases of emergency involving the safety of human life or the protection of property (31 U.S.C. § 1342).

### **10. What happens if the shutdown begins, and an employee is not required to report to work on the first day of the furlough due to an AWS day off?**

The employee should be contacted by phone and/or email and provided instructions regarding the furlough. The written notice and guidance may also be provided to the employee by regular mail with a return receipt or by email with a read receipt.

### **11. Can VA cancel an employee's AWS day off and require them to report on the first day a furlough begins?**

If an employee has not met the 80-hour requirement for the pay period, they can be called in. This may cause hardship if the employee already had scheduled plans for that day and may create labor issues. If an employee has already met the 80-hour requirement for the pay period, they would be entitled to overtime or compensatory time off, as appropriate.

### **12. Should Continuity of Operations (COOP) and emergency employees automatically be categorized as excepted?**

No. The criteria used to determine COOP and emergency employees might not be consistent with the criteria used to identify excepted activities.

### **13. What happens if an employee performing excepted activities becomes incapacitated and unable to perform those activities?**

If an excepted employee is unable to report for work because of emergency conditions or because they are incapacitated, the employee will be placed in furlough status. The supervisor or manager should designate another employee to perform the excepted activity. If the work cannot be assigned to another excepted employee, the supervisor may recall an employee that has been furloughed.

### **14. What happens if an employee whose tour of duty is overseas when a furlough begins?**

The supervisor should immediately contact the employee to notify them of the furlough. In addition, the supervisor will inform the employee if they are designated as furloughed, excepted, or exempt; if they should continue work; or if they should cease work and depart from the duty station.

### **15. May employees working during the furlough continue to work an AWS work schedule?**

Work schedules are established in a manner that reflects the actual work requirement; therefore, a supervisor may adjust an employee's work schedule to meet the needs of the activity during the furlough. In addition, pertinent terms of established labor agreements should be considered.

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### **16. What happens to a furloughed employee that does not return to work after the furlough ends?**

An employee is required to report to work on their first regularly scheduled duty day immediately following the furlough. If an employee is required to report to work but fails to report to work, the employee will be considered absent without leave (AWOL) and may face disciplinary action. Employees who are unable to report to work for various reasons should follow their organization's policies for requesting leave.

Employees are advised to check the [VA website](http://va.gov) (va.gov), the [Office of Personnel Management \(OPM\) website](http://opm.gov) (opm.gov), and major news broadcasts for status updates regarding the furlough.

### **17. How will an employee's hours worked during the furlough be documented?**

It is a shared responsibility of the supervising official and employee to account and document for the work and amount of time spent performing work while on a tour of duty. There may be a situation when an employee's first line supervisor has been furloughed and an employee is performing excepted activities during the furlough. In this situation, another supervising official will be required to provide oversight for the activities performed by the employee. In addition, the employee should seek out an overseeing official in their upper chain of command on a periodic basis throughout the workday.

### **18. Will furloughed employees be allowed to retain their personal identity verification card (PIV), government credit and travel card?**

Yes. During a furlough, employees who have been furloughed are placed in a non-pay status and remain on the rolls for the agency; however, furloughed employees should not use the cards or service during the furlough period.

### **19. Will furloughed employees be allowed to enter the premises of their workplace? Can furloughed employees access personal effects in their office space?**

Upon receiving their furlough notice, employees will be given adequate time to gather their belongings. As instructed in the furlough notice, employees are instructed to refrain from performing work-related activities and are advised to remain away from their workplace until recalled. However, furloughed employees may visit Federal facilities or buildings for personal reasons such as transactions at a credit union or visiting a patient at a VA medical center.

### **20. If an employee dies during furlough, will the estate receive death benefits?**

Yes, death benefits will be paid if an employee dies during furlough based on the employee's benefit elections.

### **21. Can an employee resign during a furlough?**

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Yes, however, if there is severance pay (unused annual leave) involved, no funds may be authorized for payments during the lapse until an appropriation is enacted. Once an appropriation is in place, the employee will receive the pay they would have received had the lapse not occurred.

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### D. Pay and Deductions from Pay

**1. How will the furlough impact an employee's paycheck if they worked during the pay period that the furlough became effective prior to the effective date of the furlough?**

Paychecks will only contain pay for the hours earned prior to the furlough effective date. For example, the assumption is that the employees' work schedule is a normal tour of duty within the 40-hour basic workweek (Monday through Friday). If the furlough becomes effective on the second Monday of the pay period, the employee will only receive pay for the hours earned during the first week; therefore, the employees' paycheck would be based on 40 hours of pay instead of the normal 80 hours.

Guidance from the previous furloughs can be found in:

- [OMB's August 28, 1980, Bulletin No. 80-14, Shutdown of Agency Operations Upon Failure by the Congress to Enact Appropriations](#), paragraph 3.b.(1) *Appropriations and Funds*
- [OMB's August 20, 1982, Bulletin No. 80-14, Supplement No. 1, Agency Operations in the Absence of Appropriations](#)
- [OMB Circular No. A-11, dated August 15, 2022, Section 124, Agency Operations in the Absence of Appropriations](#)
- [OPM memorandum for Chief Human Capital Officers, dated January 27, 2019, Pay and Benefits for Employees Affected by the Lapse in Appropriations](#)

**2. Will Defense Finance and Accounting Service (DFAS) continue to provide personnel/payroll services for VA during the shutdown?**

Yes. DFAS will continue to provide personnel/payroll during the furlough.

**3. Are employees who are furloughed entitled to receive retroactive pay? What about employees that are excepted? What about exempt employees?**

Retroactive pay is authorized for Federal employees affected by a lapse in appropriations (31 U.S.C. § 1341). After a lapse ends, employees who were furloughed are entitled to receive their standard rate of pay, which includes any basic pay, overtime and other premium pay for regularly scheduled work, regular premium payments, allowances, and differentials payable on a regular basis.

Employees who were on previously approved LWOP or who were AWOL during the lapse in appropriations will not receive pay for those hours.

## Frequently Asked Questions for Shutdown Furlough

After the lapse ends, excepted employees will receive their standard rate of pay for the actual hours they worked (e.g., including any overtime or other premium pay, allowances, and differentials earned based on actual hours worked). Any time that an excepted employee is placed in furlough status will be compensated under the rules for furloughed employees.

Both furloughed and excepted employees will be paid after the lapse in appropriations ends.

#### **4. When an employee's pay is insufficient to permit all deductions to be made, what is the order of withholding precedence?**

Each employing agency is responsible for establishing an order of precedence for applying deductions from the pay of its civilian employees when gross pay is insufficient to cover all authorized deductions. The established order of precedence must comply with any applicable laws, regulations or other legal authority, including the following regulations in title 5 C.F.R. § 550.301 (dealing with allotments), 5 C.F.R. § 550.805(e) (dealing with back pay awards), 5 C.F.R. § 550.1104 (dealing with collecting debt to the Government by salary offset), 5 C.F.R. § 581.105 (dealing with garnishments for child support and/or alimony), and 5 C.F.R. § 582.103 (dealing with garnishments for commercial debt). Consistent with 5 U.S.C. §§ 8334(a-c) and 8422(a-c), retirement deductions are made before any other deduction.

Order of precedence currently used by DFAS is as follows:

- 1st Retirement
- 2nd OASDI (Social Security) Tax
- 3rd Medicare Tax
- 4th Federal Income Tax
- 5th Federal Employees Health Benefit (FEHB)
- 6th Federal Employees Group Life Insurance (FEGLI)-Basic
- 7th State Income Tax
- 8th Local Income Tax
- 9th Collection of Debts Owed U.S. Government (e.g., tax debt, salary overpayment, failure to withhold proper amount of deductions, advance of salary or travel expenses, etc., debts that may or may not be delinquent; debts that may be collected through the Treasury Offset Program, an automated centralized debt collection program for collecting Federal debt from Federal Payments)
  - a. Continuous Levy under the Federal Payment Levy Program (tax debt). NOTE: Continuous Tax Levies received after child support orders will follow the child support deduction in the order of precedence. Continuous tax levies received prior to child support orders will take precedence over child support.
  - b. Salary Offsets (whether involuntary under 5 U.S.C. § 5514 or similar authority or required by a voluntarily signed written agreement; if multiple debts are subject to salary offset, the order is based on when each offset commenced—with the earliest commencing offset at the top of the order—unless there are special circumstances, as determined by the paying agency).

## Frequently Asked Questions for Shutdown Furlough

- 10th Child Support (may include attorney and other fees as provided for in 5 C.F.R. § 581.102(d). If there are multiple child support orders, the priority of orders is governed by 42 U.S.C. § 666(b) and implementing regulations, as required by 42 U.S.C. § 659(D)(2).
- 11th Subsistence
- 12th Garnishment/Alimony
- 13th Garnishment Attorney Fees
- 14th Bankruptcy – Chapter 13
- 15th Commercial Garnishments
- 16th Health Care Flexible Spending Account (FSA)
- 17th Dependent Care FSA
- 18th Dental Federal Employees Dental and Vision Insurance Program (FEDVIP)
- 19th Vision FEDVIP
- 20th Health Savings Account
- 21st FEGLI Standard Option
- 22nd FEGLI Additional Option
- 23rd FEGLI Family Option
- 24th Long-Term Care Insurance
- 25th Thrift Savings Plan (TSP) Loan Payments
- 26th TSP Contributions
- 27th TSP Catch-Up Contributions
- 28th Voluntary Government Indebtedness
- 29th Voluntary Child Support/Alimony
- 30th Charity
- 31st Voluntary Payment of Back Taxes
- 32nd Housing Quarters
- 33rd Parking
- 34th VCS Allotment
- 35th Savings Allotments
- 36th Military Service Deposit
- 37th Student Loans
- 38th Paper Tax Levy

### **5. Can an employee obtain a loan from their TSP account while in a non-pay status?**

Yes. Generally, TSP participants must be in a pay status to be eligible for a TSP loan. However, since shutdowns are rare occurrences and are typically of short duration, the TSP's Executive Director has determined that it is in the best interest of TSP participants to interpret the requirement that participants be in a pay status to mean that a break in pay due to a Government shutdown does not disqualify one from TSP loan eligibility. The TSP will continue its normal daily operations during the Federal Government shutdown.

### **6. What happens if an employee has a TSP loan and is placed in a non-pay status?**

If you have an outstanding loan and you are furloughed, your loan payments will stop because they are deducted from your pay. If an employee is placed in a non-pay status they are allowed to miss TSP loan payments for up to one year, if certain TSP rules are followed. Repayment must start when the employee returns to pay status. Employees

## Frequently Asked Questions for Shutdown Furlough

can also continue to make payments directly to TSP during the furlough so that no payments are missed.

Visit the TSP lapse in appropriations [website](#) to get updated information about the shutdown's impact on TSP contributions, loans, and withdrawals.

### **7. If an employee files and receives unemployment payments during the shutdown and then returns to duty and receives retroactive pay for the period of furlough, will they have to repay the unemployment payments they received?**

If an employee is paid retroactively for the furlough period, they will be required to pay back any unemployment insurance benefits received. Employees must review their state's specific unemployment insurance regulations. More information can be found in [OPM's Unemployment Insurance Questions and Answers](#).

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## **E. Service Credit for Various Purposes**

### **1. Is furlough or LWOP considered a break in service?**

No. Furlough and LWOP are defined as being in non-pay, non-duty status. However, an extended furlough period or LWOP may affect the calculation of creditable service for certain purposes.

### **2. To what extent does non-pay status affect civil service benefits and programs?**

A non-pay status (which includes furlough, LWOP, absence without leave, and suspension) is credited as follows:

- a. For career tenure, the first 30 calendar days of each non-pay period is creditable service.
- b. For completion of probation, an aggregate of 22 workdays in a non-pay status is creditable service.
- c. For X-118 qualification standards, there is no requirement to extend qualifying periods by the amount of non-pay status. However, agencies may require such extensions to meet training requirements or ability to perform.
- d. For time-in-grade requirements, non-pay status is creditable service.
- e. For retirement purposes, an aggregate non-pay status of six months in any calendar year is creditable service. Coverage continues at no cost to the employees while in a non-pay status. When employees are in a non-pay status for only a portion of a pay period, their contributions are adjusted in proportion to their basic pay (5 U.S.C. §§ 8332 and 8411). The exception would be an employee who had substantial time in a non-pay status earlier in the year if the furlough causes them to have more than six months' time in a non-pay status during the calendar year.
- f. For health benefits, enrollment continues for no more than 365 days in a non-pay status. The non-pay status may be continuous or broken by periods of less than four consecutive months in a pay status (5 C.F.R. § 890.303(e)). The Government

## Frequently Asked Questions for Shutdown Furlough

contribution continues while employees are in a non-pay status. The Government is also responsible for advancing the employee's share from their salary. The employee can choose between paying the agency directly on a current basis or having the premiums accumulate and be withheld from their pay upon returning to duty.

- g. For life insurance, coverage continues for 12 consecutive months in a non-pay status without cost to the employees (5 C.F.R. § 870.401(c)) or to the agency (5 C.F.R. § 870.401(d)). The non-pay status may be continuous, or it may be broken by a return to duty for periods of less than four consecutive months.
- h. For within-grade increases, an aggregate of 2 workweeks in non-pay status in a waiting period is creditable service for advancement to steps 2, 3, and 4 of the General Schedule; four workweeks for advancement to steps 5, 6, and 7; and six workweeks for advancement to steps 8, 9, and 10 (5 C.F.R. § 531.406(b)). For prevailing rate employees (WG, WL, and WS schedules), an aggregate of one workweek in non-pay status is creditable service for advancement to step 2, three weeks for advancement to step 3, and four weeks for advancement to steps 4 and 5 (5 C.F.R. § 532.417(b)).
- i. For annual and sick leave, when a full-time employee accumulates 80 hours of leave without pay during the leave year, the amount of annual and sick leave that may be accrued in the pay period that the employee reaches 80 hours of LWOP is reduced by the amount of leave the employee would normally earn during the pay period (5 C.F.R. § 630.208). When a part-time employee is in a non-pay status, they will accrue less annual leave and sick leave since part-time employees earn leave on a pro-rata basis—i.e., based on hours in a pay status (5 C.F.R. § 630.303 and 630.406). For purposes of computing accrual rates for annual leave, creditable service for time in a non-pay status is limited to an aggregate of 6 months in a calendar year (5 U.S.C. §§ 6303(a) and 8332(f)).
- j. For RIF, an aggregate of 6 months non-pay status in a year is creditable service.
- k. For severance pay, non-pay status time is fully creditable for the 12-month continuous employment period required by 5 U.S.C. § 5595(b)(1) and 5 C.F.R. § 550.705. However, for purposes of determining service creditable toward the *computation* of an employee's severance pay fund under 5 U.S.C. § 5595(c)(1) and 5 C.F.R. § 550.707-708, no more than 6 months of non-pay status time per calendar year is creditable service. (This is the same rule used in crediting non-pay status time as "service" in determining annual leave accrual rates.)
- l. For TSP, the TSP will continue its normal daily operations during the Federal Government shutdown. Read the TSP fact sheet, [Effect of Nonpay Status on Your TSP Account](#) , to get answers to questions about the shutdown's impact on TSP contributions, loans, and withdrawals.
- m. For military duty or workers' compensation, non-pay status for employees who are performing military duty or being paid workers' compensation counts as a continuation of Federal employment for all purposes upon the employee's return to duty.

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## F. Retirement, Insurance, and Benefits

## Frequently Asked Questions for Shutdown Furlough

- 1. When a furlough occurs during the three years of service prior to retirement, what effect will time in furlough status have on an employee's high-three average?**

Generally, there will be no effect on the high-three average unless the furlough causes the employee to be in a non-pay status for more than six months during the calendar year.

- 2. Are the retirement rules concerning the effect of a furlough the same for employees under the Civil Service Retirement System and the Federal Employees Retirement System?**

Yes.

- 3. What happens if employees cancel FEHB coverage while in a non-pay status to avoid the expense?**

Unlike other types of non-pay status, employees in a non-pay status due to a lapse of appropriations (shutdown furlough) will not have the opportunity to terminate or cancel FEHB coverage. The employee will remain covered; the enrollee share of the FEHB premium will accumulate and be withheld from pay upon return to pay status.

- 4. What will happen to furloughed employees who would have retired during the shutdown?**

For furloughed employees who, on or before the requested retirement date, submitted some notice of their desire to retire, VA will make the retirement effective as of the date requested once the lapse in appropriations ends. The retirement request may be informal (such as a letter requesting retirement) and can be either mailed, emailed, or personally submitted to VA. Any additional required paperwork such as the formal retirement application form may be completed when VA reopens. No time spent by the retiree in such actions after the effective date of the retirement may be considered as duty time since the individual would no longer be an employee of VA.

Some employees may request retirement retroactive to a date prior to submission of the request. Retroactive personnel actions (including retirements) are permitted only under limited circumstances. It will be up to the employing agency to determine in each case whether OPM's requirements and the CG's guidance have been met. In [Butler, B-192295 58 Comptroller General 51, \(1978\)](#), the CG stated:

As a general rule a personnel action may not be made retroactive to increase the rights of an employee to compensation. We have made exceptions to this rule where administrative or clerical error (1) prevented a personnel action from being affected as originally intended, (2) resulted in nondiscretionary administrative regulations or policies not being carried out, or (3) has deprived the employee or a right granted by statute or regulation.

- 5. Will an employee continue to be covered under the FEHB program during the furlough?**

## Frequently Asked Questions for Shutdown Furlough

Yes, the employee's FEHB coverage will continue even if VA does not make the premium payments on time.

### **6. What effect will a furlough have on a Childcare Subsidy Program?**

Due to the lapse of annual appropriations, the furlough will suspend all childcare subsidy benefit payments to childcare providers and will suspend participants' enrollment into the program.

### **7. How will participants and childcare providers be impacted?**

Due to the lapse of annual appropriations, participants' daycare providers will not be provided subsidy benefit payments on behalf of participants to subsidize their childcare cost.

### **8. Will furloughed employees be required to turn in unused transit subsidies?**

Yes. Furloughed transit benefits participants should not download additional transit benefits until ordered to return to work. Benefits that have been downloaded but not used due to the furlough should be turned in, or employees may adjust their next month's benefit downward.

### **9. Will excepted non-paid employees be able to receive transit subsidies?**

In the event of a lapse of appropriations, the Department of Transportation (DOT) has notified VA that nationwide transit subsidy services will be suspended. Because Smart Benefits is funded quarterly in advance, National Capital Region employees will be able to download Smart Benefits until the beginning of the first unfunded quarter in July.

### **10. Will transit subsidies be issued on October 1<sup>st</sup>?**

If no appropriation is received by October 1st, DOT will continue to suspend services. Furloughed employees should not claim their benefits until they return to work.

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## **G. Federal Holidays**

### **1. May employees be furloughed on a Federal holiday?**

Employees may be furloughed for periods of time that include Federal holidays. However, the selection of the furlough period in question should be justified on programmatic and administrative grounds that are unrelated to the fact that the period includes a holiday. For example, an agency may not properly furlough employees for a three-day period, the middle of which is a Federal holiday, for the sole purpose of saving three days' pay while losing only two days of work. (See [Comptroller General Opinion B-224619, August 17, 1987](#).) Neither would it be proper to furlough an employee solely on a holiday. (See [Comptroller General Opinion B-222836, May 8, 1986](#).)

## Frequently Asked Questions for Shutdown Furlough

- 2. If employees are furloughed on the last workday before a Federal holiday or the first workday after a Federal holiday (but not on both days), will they be paid for the holiday?**

Yes. The general rule is that an employee is entitled to pay for a Federal holiday as long as they are in a pay status on either the workday preceding a Federal holiday or the workday following a Federal holiday. The employee is paid for the Federal holiday based on the presumption that the employee would have worked if it had not been a Federal holiday. (Note: A holiday should not be the first or last day of the period covered by a furlough.)

- 3. If employees are furloughed on the last workday before a Federal holiday and the first workday after a Federal holiday, will they be paid for the Federal holiday?**

No. If a furlough includes both the last workday before the Federal holiday and the first workday after the Federal holiday, the employee is not entitled to pay for the Federal holiday because there is no longer a presumption that the employee would have worked if it had not been a Federal holiday. (See [Comptroller General Opinion B-224619, August 17, 1987](#))

- 4. Can excepted employees be required to perform work on a Federal holiday that occurs during a furlough?**

Yes. Each agency is responsible for determining which excepted activities must be performed on a holiday to carry out functions related to national security, protection of life or property, or the orderly suspension of agency operations. If an excepted employee refuses to report for work on a Federal holiday after being ordered to do so, they can be considered AWOL and may be charged with failure to follow instructions.

- 5. What pay entitlements will accrue to an excepted employee who performs work on a Federal holiday?**

The Federal Government will be obligated to pay an excepted employee who performs work on a Federal holiday according to the normal rules governing pay for work on a Federal holiday. Under these rules, an employee would receive their rate of basic pay plus Federal holiday premium pay at a rate equal to the employee's rate of basic pay. In addition, if such an employee performs officially ordered or approved overtime work on a Federal holiday (i.e., work in excess of their basic non-overtime work requirement for that day), the employee would receive overtime pay or compensatory time off for that work. Of course, an employee cannot be paid for working on a Federal holiday until an appropriations act or a continuing resolution is enacted.

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### H. Leave During Furlough

- 1. Does a shutdown furlough affect the accrual of annual leave and sick leave?**

If an employee is furloughed (i.e., placed in non-pay status) for part of a biweekly pay period, the employee's leave accrual will generally not be affected for that pay period.

## Frequently Asked Questions for Shutdown Furlough

However, the accumulation of non-pay status hours during a leave year can affect the accrual of annual leave and sick leave over a period of time. (See 5 C.F.R. § 630.208 and Notes 1 and 2 below.) For example, when a full-time employee with an 80-hour biweekly tour of duty accumulates a total of 80 hours of non-pay status from the beginning of the leave year (either in one pay period or over the course of several pay periods), the employee will not earn annual and sick leave the pay period in which that 80-hour accumulation is reached. If the employee again accumulates 80 hours of non-pay status, they will again not earn leave the pay period in which that new 80-hour total is reached. At the end of the leave year, any accumulation of non-pay status hours of less than 80 hours is zeroed out, so the accumulation of non-pay status hours for the next leave year starts at zero.

For part-time employees, the rule blocking accrual of leave based on the accumulation of non-pay status hours (5 C.F.R. § 630.208) does not apply. Instead, leave accrual for part-time employees is prorated based on hours in a pay status in each pay period; thus, time in non-pay status reduces leave accrual in each pay period containing such time (5 C.F.R. § 630.303 and 5 U.S.C. § 6307).

**Note 1:** The term “non-pay status,” established for leave use purposes, refers to the period during which an employee is absent from their tour of duty and receives no pay for that absence. Furlough is one type of non-pay status.

**Note 2:** The term “leave year” is defined as the period beginning on the first day of the first full biweekly pay period in a calendar year and ends on the day immediately before the first day of the first full biweekly pay period in the following calendar year. For example, for employees on the standard biweekly payroll cycle, the 2023 leave year is January 1, 2023, and ends on January 13, 2024. (See fact sheet at <https://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/leave-year-beginning-and-ending-dates/>.)

**Note 3:** For full-time employees with an uncommon tour of duty under 5 C.F.R. § 630.210, the accumulation limit used in applying 5 C.F.R. § 630.208 is the number of hours in the uncommon tour of duty for a biweekly pay period.

- 2. If employees request paid leave (i.e., annual, sick, court, military leave, or leave for bone marrow or organ donation) after receiving a furlough notice, can the requests be denied for those days that coincide with the dates of furlough? If an agency has already approved requests for these categories of paid leave before issuance of the proposed furlough notice, can the approval be rescinded and the employees furloughed on the days that coincide with the dates of furlough?**

The answer to both questions is yes. In a “shut-down” or “emergency” furlough, all paid leave during a furlough is canceled because the necessity to furlough supersedes leave rights. The Antideficiency Act (31 U.S.C. § 1341 *et seq.*) does not allow authorization of any expenditure or obligation before an appropriation is made unless authorized by law. Paid leave creates a debt to the Government that is not authorized by the Act. Therefore, agencies are instructed that during a lapse in appropriations, all paid leave during a furlough must be canceled and employees must be either (1) at work performing excepted activities or (2) furloughed.

## Frequently Asked Questions for Shutdown Furlough

- 3. Are employees who are designated as non-excepted and were on approved leave when the furlough began required to report to work when the furlough ends?**

The employee should contact their supervisor when the furlough ends to confirm that they have permission to resume the previously approved, scheduled leave, as the needs of the organization may have changed during the furlough.

- 4. May *excepted* employees take previously approved paid leave during a furlough caused by a lapse in appropriations, i.e., a "shut-down" or "emergency" furlough? May *excepted* employees be granted new requests for paid leave during the lapse in appropriations?**

No. When an employee is not at work and performing the duties determined by VA to be allowable activities in compliance with the Antideficiency Act, they cannot be in a paid leave status. Therefore, VA must take one of the following actions: (1) cancel any approved paid leave during the furlough and/or deny any new requests for paid leave; or (2) furlough the employee for the period of the employee's absence from duty. An agency may subsequently terminate the furlough whenever the employee's services are required for excepted activities.

If an excepted employee refuses to report for work after being ordered to do so, they will be considered AWOL and may be subject to further administrative disciplinary action.

- 5. Typically, all employees, including those that telework, are required to report for work on the day a "shut-down" or "emergency" furlough begins. How should VA determine the number of work hours and the number of furlough hours for each non-excepted employee?**

On a case-by-case basis, VA determines the amount of time each non-excepted employee works on the day a furlough begins. If an employee is on approved leave on the day the furlough takes effect, both excepted and non-excepted employees should be charged the appropriate kind of leave for the approximate period of time from the beginning of each individual employee's normal workday until the time other similarly situated employees departed from work after receiving furlough notices. Once the furlough begins, excepted employees are required to be at work. The remaining period of time in a non-excepted employee's regularly scheduled tour of duty (after taking into account part-time work schedules, uncommon tours of duty, or previously approved flexible or compressed work schedules) would be considered furlough time, even if the non-excepted employee had previously been scheduled to take paid leave later in the day. An agency may subsequently terminate the furlough if the employee's services are required for excepted activities.

It is a shared responsibility of the supervising official and employee to account and document for the work and amount time spent performing work while on a tour of duty.

- 6. If an employee is on leave under the Family and Medical Leave Act of 1993 (FMLA) during the furlough, does the leave count toward the 12-week entitlement to FMLA leave?**

## Frequently Asked Questions for Shutdown Furlough

An employee who is on approved LWOP under the FMLA on days that coincide with the period of furlough will continue to be charged LWOP. Consistent with law and regulations, the LWOP taken under the FMLA is part of the 12-week entitlement. However, an employee who was scheduled during the furlough to take *paid* leave under the FMLA (i.e., an employee chooses to substitute annual leave, sick leave, or paid parental leave as appropriate, for unpaid leave under the FMLA) must be placed on furlough instead. Since the paid leave was canceled, the period of absence may not be used to reduce the 12-week entitlement to FMLA leave. Any periods of leave, time off, or other periods of nonduty status will extend how long it will take an employee to fulfill the 12-week work obligation under paid parental leave.

### **7. Will employees be allowed to apply and/or participate in the voluntary leave transfer program (VLTP) during the shutdown?**

The answer depends on the status of the employee and the human resources personnel processing the actions:

- a. Furloughed Employees: While employees are furloughed, they are in a non-duty, non-pay status. Though they may submit an application to the VLTP, there may or may not be any personnel to process the application. Additionally, while in furlough status, they would not be able to participate in the program.
- b. Excepted Employees: Employees may be excepted from furlough by law because they are (1) performing emergency work involving the safety of human life or the protection of property, (2) involved in the orderly suspension of agency operations, or (3) performing other functions exempted from the furlough. Excepted employees may submit applications to the VLTP, however there may or may not be available staff to perform the excepted function(s) during the shutdown. Employees would be placed in furlough status and unable to participate in the program during that period.
- c. Exempt Employees: Employees in funded organizations are exempt from furlough and could submit an application; however, processing would depend on the status of personnel working the actions.

### **8. If I have been approved for VLTP, can leave donations I received be applied retroactively?**

- a. Furloughed Employees: While employees are furloughed, they are in a non-duty, non-pay status. Leave cannot be applied retroactively.
- b. Excepted Employees: Employees may be excepted from a furlough by law because they are (1) performing emergency work involving the safety of human life or the protection of property, (2) involved in the orderly suspension of agency operations, or (3) performing other functions exempted from the furlough. Excepted employees will either be performing excepted functions or, if unable to do so, placed in furlough status. There would be no basis to apply donated leave retroactively.

## Frequently Asked Questions for Shutdown Furlough

- c. Exempt Employees: Employees in funded organizations are exempt from furlough. Donated leave can be applied during the appropriate pay period, which may include retroactive application of donations.

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### I. LWOP

1. **If an employee is scheduled to take approved LWOP during a "shut-down" or "emergency" furlough, should the employee continue to be charged LWOP during the period of furlough?**

If the approved LWOP was scheduled to end before the furlough ended, the employee must be placed on furlough for the remainder of the furlough period unless later designated as an excepted employee.

2. **May an employee voluntarily request LWOP for a holiday?**

No. A holiday is considered a day when an employee is excused from regularly scheduled work for leave purposes (5 U.S.C. § 6302(a)). Therefore, an employee may not request or be granted LWOP for a holiday.

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### J. Continuation of Pay (COP)

1. **If employees are receiving COP due to job-related injuries, can the COP be terminated or interrupted by furlough?**

No. According to the Department of Labor, employees are maintained on COP status during periods of furlough.

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### K. Injury While on Furlough or LWOP

1. **Are employees who are injured while on furlough or LWOP eligible to receive workers' compensation?**

No. Workers' compensation is paid to employees only if they are injured while performing their duties. Employees on furlough or LWOP are not in a duty status for this purpose. An employee who is receiving workers' compensation payments will continue to receive workers' compensation payments during a furlough and will continue to be charged LWOP.

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### L. Unemployment Compensation

1. **Are employees entitled to unemployment compensation while on furlough?**

It is possible furloughed employees may become eligible for unemployment compensation. State unemployment compensation requirements differ. Some states require a 1-week waiting period before an individual qualifies for payments. Agencies or employees should submit questions to the appropriate state (or District of Columbia) office. In general, the law of the state in which an employee's last official duty station in Federal civilian service was located will be the state law that determines eligibility for

## Frequently Asked Questions for Shutdown Furlough

unemployment insurance benefits. (See the Department of Labor website [Unemployment Compensation for Federal Employees.](#))

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### M. Payments upon Separation from Federal Service

- 1. If there is a "shut-down" or "emergency" furlough because of a lapse in appropriations, may employees who are separating receive a lump-sum payment for their unused annual leave? Are the funds paid out of the previous fiscal year's monies or the new fiscal year's monies?**

The obligation of funds for a lump-sum annual leave payment is triggered by an employee's separation from Federal service. For example, if an employee separates on September 30, 2023, the money to pay the lump-sum annual leave payment is obligated during FY 2023. Although the lump-sum payment would be made in FY 2024, it would be paid from FY 2024 funds.

In the event of a lapse in appropriations, agencies are allowed to employ staff to perform activities necessary for the orderly suspension of non-excepted activities. This may include the processing of payroll for the pay periods prior to the lapse in appropriations. A minimum number of payroll staff may be excepted from furlough for the minimum time required to issue checks, including checks for lump-sum annual leave payments paid from funds obligated before the lapse in appropriations.

If an employee separates during a lapse in appropriations, the lump-sum annual leave payment must be delayed until enactment of an appropriation that would allow the obligation and payment of funds for this purpose.

- 2. How are separated employees' entitlements to severance pay affected by a lapse in appropriations?**

Funds for severance pay are obligated on a day-to-day basis as the recipient accrues continuing entitlement to severance pay by not being reemployed by the Government of the United States. (Severance pay is suspended or terminated when the individual is reemployed by the Federal Government.) Severance pay is paid at the same pay period intervals as if the recipient were still employed. Any severance payment (on a payroll payday) is linked to the corresponding pay period during which the recipient accrued continuing entitlement to severance pay. If the recipient is reemployed by the Federal Government during a pay period, they are entitled to a prorated severance payment covering the days in the period prior to reemployment (e.g., 2/5 of one week's pay if the recipient was reemployed on the third workday of the pay period).

Thus, in the case of a lapse in appropriations, accrued but unpaid severance pay represents an obligation to be paid from funds available before the lapse in appropriations occurred. Just as payroll checks for work performed prior to a lapse in appropriations can be processed as part of the orderly suspension of non-excepted activities, severance pay checks covering days before the lapse may also be processed.

After a lapse in appropriations begins, a separated employee continues to accrue

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entitlement to severance pay on a day-to-day basis. However, no funds may be authorized for severance payments for days during the lapse until an appropriation is enacted. Once an appropriation is in place, the employee will receive the severance pay they would have received had the lapse not occurred. (Note: A lapse will not affect severance payments if an appropriation is enacted before the pay date for any severance payment covering the pay period in which the lapse occurred.)

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### **N. Performance Awards and Within-Grade Increases**

**1. If agency performance management plans require the payment of performance awards to employees, can the payment be delayed until after the furlough?**

Yes. Neither law nor regulation requires agencies to pay performance awards granted under 5 U.S.C. §§ 43 and 45 and 5 C.F.R. § 451.104(a)(3). If agency performance management plans require the payment of performance awards, agencies may delay payment until after the furlough when funds are available.

**2. May agencies deny or delay within-grade or step increases for General Schedule and Federal Wage Schedule employees?**

Within-grade and step increases for white-collar and blue-collar employees are awarded on the basis of length of service and individual performance. Such increases may not be denied or delayed solely because of lack of funds. However, extended periods of non-pay status (e.g., because of a furlough for lack of funds) may affect the timing of such increases. For example, a General Schedule (GS) employee in steps 1, 2, or 3 of the grade who is furloughed for more than two workweeks during the waiting period would have their within-grade increase delayed by at least a full pay period. (See 5 C.F.R. § 531.406(b)).

**3. Are agencies required to pay performance awards to SES career appointees during a shutdown furlough?**

No. The applicable law (5 U.S.C. § 5384) and regulation (5 C.F.R. § 534.405) do not specify when an SES performance award must be paid to a career appointee, nor do they provide a basis to pay awards when no appropriated funds are available for that purpose. Therefore, if a shutdown furlough intervenes, an agency may defer payment of SES performance awards until after the furlough, when funds are available.

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### **O. Labor Management Relations Implications**

*The following section provides general information about agency bargaining obligations during a time of reduced budgets. Officials responsible for preparing for furloughs, RIFs, hiring and promotion freezes, etc., should work closely with the agency's labor relations staff.*

**1. What is an agency's obligation to bargain when it becomes necessary to furlough employees?**

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The decision to furlough employees is a management right protected from collective bargaining by 5 U.S.C. § 7106 (a)(2)(A). However, the agency must bargain over the impact and implementation of its decision and over appropriate arrangements for employees adversely affected by the furlough unless the matter of furloughs is already "covered by" the agreement. See 47 FLRA Nos. 96, 99 and 114 and other cases in which the authority applied its "covered by" doctrine to determine whether the agreement provisions relieve the agency of any duty to bargain on impact and implementation on this matter.

### **2. Does an agency have to bargain over its decision as to which activities would be excepted from a furlough under the OMB guidelines?**

No. Although agencies are encouraged to discuss this issue with unions in partnership, such a decision is nonnegotiable because it relates to determination of the agency's mission and/or because it relates to the assignment of work. Both of those areas are reserved to management by 5 U.S.C. § 7106(a). However, an agency would have to bargain, if requested to do so, by the exclusive representative (union) over the impact and implementation of management's decision. (See, e.g., [Social Security Administration, 22 FLRA 868, 873 \(1986\)](#)).

### **3. In the event of a lapse of appropriations necessitating a "shutdown" furlough, what is an agency's obligation to bargain?**

Although the circumstances are more urgent than those described earlier, agencies still have a duty to notify the union and bargain upon request on whatever negotiable impact and implementation proposals the union may submit. Because the agency must act by a certain date, whatever bargaining that takes place must be accomplished in the little time available before action is necessary. If an agreement is not reached in the time allowed, the agency should tell the union what actions it will take. Although the union may try to invoke the services of the FSIP, it is unlikely that the Panel will have time to get involved. Regardless of whether FSIP participation is requested by the union, the agency can justify furlough actions according to Treasury, 18 FLRA No. 61 where "consistent with the necessary functioning of the agency."

Some of the urgency could be reduced before the appropriation lapses if the agency notified the union of the actions it plans to take and asked the union for its views and suggestions. Nothing prevents the parties from bargaining in advance of a looming crisis to eliminate any need for bargaining when the crisis occurs. The FLRA has frequently held that there is no need to engage in impact and implementation bargaining on matters already "covered by" the agreement.

### **4. What steps should an agency take to meet its obligation to bargain?**

Under the labor-management statute, the agency must give the union "adequate" notice of its intent to furlough employees who are represented by the union. "Adequate" is not defined, and the FLRA determines what is adequate notice based on the nature of the action taken by the agency and amount of time it judges adequate to bargain. These

## Frequently Asked Questions for Shutdown Furlough

statutory notice requirements may have been augmented or modified by any negotiated agreements.

**5. What are the implications if an agency furloughs employees before it gives the union timely notice and meets its bargaining obligations?**

It is an unfair labor practice to refuse to negotiate in good faith. If the FLRA finds that the agency engaged in an unfair labor practice, it may order the agency to renegotiate an agreement with retroactive effect and may require reinstatement of affected employees with back pay.

**6. May the agency issue its notice of proposed furlough before it has completed bargaining?**

Probably not (unless one can make a 7106(a)(2)(D) case that the action was "necessary to carry out the agency mission during emergencies"). See *Scott AFB*, 44 FLRA No. 92, where the authority found that the agency committed an unfair labor practice (ULP) when it directed the activity to issue notices of proposed furlough without providing the union with adequate notice and an opportunity to bargain over impact and implementation. In the process, the FLRA rejected the Administrative Law Judge's conclusion that the issuance of proposed furlough to unit employees without notice to the union and bargaining was not a ULP because the notices did not affect a change in conditions of employment. Regarding the latter, FLRA said the following:

*[T]he issuance of the notices of proposed furlough constitutes a step necessary to furlough employees and, in fact, places employees in a status in which they can be furloughed. In this regard, the notices of proposed furlough issued to employees in this case are similar to the RIF notices issued to employees in Scott AFB, [33 FLRA No. 92]. Both notices changed affected employees' conditions of employment by placing the employees in a status in which they "became subject to actions to which they had not been subject prior to the issuance of the notices." [44 FLRA at 125].*

**7. If an existing negotiated agreement requires the agency to give a longer notice period than that required by law before employees are furloughed, either through adverse action or RIF procedures, must the agency delay the furlough until the negotiated period has expired?**

Generally, an agency would be required to wait. However, if it would be impossible to meet statutory budget limits by waiting, the agency should furlough when statutory requirements are met. An agreement provision that is not one of the 7106 (b) exceptions to management's 7106(a) rights cannot prevent the exercise of a management right such as the right to lay off employees. In most cases, a delay in the exercise of a management right is not viewed by the authority as preventing the agency from "acting at all." Moreover, management has the right to "take whatever actions may be necessary to carry out the agency mission during emergencies."

## Frequently Asked Questions for Shutdown Furlough

### 8. What is the effect of outside directives on the obligation to bargain or to continue to abide by existing agreement provisions?

This depends on the nature of the outside directive. Any agreement must conform to existing law and any laws enacted during the life of the agreement.

With respect to other kinds of directives, it is an ULP for an agency "to enforce any rule or regulation... which is in conflict with any collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed." However, because agreements must conform to Governmentwide regulations, a directive from OMB, or any agency, that is binding on other agencies would limit bargaining over new agreement provisions.

### 9. What are the relevant provisions in the existing negotiated agreements?

Article 14, section 2(A)(2) of the VA/AFGE and Article 41 of the VA/NAGE Agreements describe title 5 furloughs under 30 calendar days as an adverse action. Section 8(A) of the VA/AFGE and section 7(A) of the VA/NAGE further states that an employee against whom an adverse action is proposed is entitled to thirty (30) days advance written notice. Section 9 further requires the agency to provide final notice to the employee.

Article 17 section 3(B)(6) of the VA/NFFE Agreement states the following:

*"Furlough for 30 days or less. This is an [sic] non-disciplinary adverse action taken on the basis of an emergency situation, lack of work or funds, or other non-disciplinary reasons. Furloughs are appropriate only when motivated by temporary concerns. MP-5, Part I, chapter 351 contains additional information."*

Article 28 of the VA/AFGE Agreement refers to RIF. A RIF is defined in section 5(A) as follows:

*"A. RIF: When the Department releases a competing employee from his/her competitive level by furlough for more than thirty (30) days, separation, demotion, or reassignment requiring displacement, when the release is required because of lack of work, shortage of funds, insufficient personnel ceiling, reorganization, the exercise of reemployment rights or restoration rights, or reclassification of an employee's position due to erosion of duties when such action will take effect after the Department has formally announced a RIF in the employee's competitive area and when the RIF will take effect within 180 days."*

Article 28 of the VA/NAGE and Article 23 of the VA/NFFE Agreements refer to RIFs.

### 10. Can union officials perform representational work on "official time" during a shutdown?

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Exempted employees (i.e., paid by non-appropriated funds) serving as union officials may continue to be granted official time to the same extent and in the same manner as they would under non-shutdown conditions. Other employees serving as union officials may work on official time during a shutdown if such activities fall within the Antideficiency Act's exceptions. The exercise of a union's statutory and/or contractual rights triggered by an excepted management action taken during a shutdown would constitute an excepted activity. Therefore, if an agency has determined that a management action taken during a shutdown is permissible because it is an excepted activity, and such action triggers union representational rights under the collective bargaining agreement or 5 U.S.C. § 71 (i.e. a formal discussion, a Weingarten interview, or the representation of an employee in connection with an adverse personnel action), official time should be granted to employees to perform representational duties related to that action. Agency officials should consult with their general counsel to evaluate whether contemplated management actions will trigger statutorily or contractually guaranteed representation rights.

### **11. Will union officials have access to their union offices if they are in furlough status?**

Generally, access to facilities during a furlough may be restricted based on funding, security, or other issues. Depending on agency operations, a facility, or portions of a facility, may be fully or partially operational.

Access to a union office during a period of furlough should not be prevented solely on the basis that a union official seeking access is not in a duty status. Access for representational purposes would be subject to each facility's requirements at the time, including provisions in collective bargaining agreements.

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## **P. Employees Paid from Other Funding Sources and Contracted Employees**

### **1. Some employees within a competitive area are paid from annual appropriations. Some are paid from a variety of other funding sources, such as trust funds, working capital, user fees, etc. Are employees who are paid from these other sources exempt from the furlough?**

VA will follow OMB guidance to determine whether positions paid from other sources are subject to furlough.

### **2. Should a non-excepted employee be allowed to work during the furlough if their salary is fully funded by an organization other than the organization that oversees their work?**

Employees whose salaries are fully funded, and other costs are paid by a no-year or current appropriation, including the Supply Fund and Veterans Canteen Service Fund, would continue to work with pay, even if Congress does not enact continuing appropriations.

### **3. How will contract employees be notified during the furlough?**

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Contracting officers will work directly with contracting companies to notify them of their status in the event of a government shutdown. (It is ultimately the contractor's responsibility to notify their employees.)

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### Q. Travel

**1. What happens to employees that are in travel status or scheduled to be in travel status when a shutdown begins?**

Employees in travel status should immediately contact their supervisor for instructions to determine if they should return to their duty station. Since some activities will be designated as non-excepted, the purpose of the employee's travel plans may be impacted by the furlough.

**2. If VA is hosting a conference or training course and a shutdown begins, can we proceed?**

The VA employees hosting a conference or training course and the VA employee(s) attending the conference or training course should immediately contact their supervisor for instructions to determine if they should return to their duty station, as they may be designated in a non-excepted activity. Employees who are neither excepted nor exempt and are scheduled for training during a shutdown furlough must be placed in furlough status and ordered not to attend the scheduled training.

**3. How will the furlough affect employees who have been authorized permanent change of station (PCS) orders and have begun travel to their duty station?**

If an individual has received PCS orders and are "en route" to the duty station, they should immediately contact the HRO for further instruction. If an individual has received PCS orders and has not begun traveling to the duty station, they should also immediately contact the HRO for further instruction to determine if the PCS is funded. At this time, the HRO, in concert with the supervisor, should also communicate to the individual their furlough status.

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### R. Processing Personnel Actions and Timecards

**1. How is time and LWOP during a shutdown furlough documented?**

Unlike an administrative furlough, agencies should *not* prepare an SF-50, "Notification of Personnel Action" (or a List Form of Notice for a group of employees who are to be furloughed on the same day or days each pay period) at the outset of a shutdown furlough. Instead, employees will receive a shutdown furlough notice citing the reasons for the furlough because the ultimate duration of a shutdown furlough is not known by agencies at the outset of the furlough. Once an appropriation has been signed by the President, agencies will be instructed on the appropriateness of preparing documentation consistent with Chapters 15 and 16 of [The Guide to Processing Personnel Actions](#).

Regarding members and former members of the uniformed services who are subject to

## Frequently Asked Questions for Shutdown Furlough

the "pay cap" reporting procedures, a copy of the furlough notice, and of the return to duty notice when one is issued, must be sent to the appropriate uniformed service finance center (addresses of the centers are in Chapter 8 of [The Guide to Processing Personnel Actions](#)), since days in non-pay status will affect the person's retirement pay. When an SF-50 is issued to document a furlough, the copy of the notice sent to the pay center must have the employee's social security number, date of birth, and dates of furlough added to it to ensure proper adjustment of their retirement pay.

### 2. How will timecards be processed?

It is very important that all timekeepers and certifying officials understand that they play a critical front-line role in a government shut-down. Timecard postings are the only method for ensuring an employee receives a salary payment. In the event of a government shut-down, the timekeeper and certifying official play an even more critical role as they must journalize the timecard correctly for (1) employees performing non-excepted activities who are immediately furloughed and (2) employees performing excepted activities who are required to come to work.

**Pre-Shutdown Activities:** The following steps outline the activities that must be completed:

- a. All offices that must discontinue activities because of a lapse of appropriations will be required to designate a primary and alternate timekeeper and certifying official.
- b. It is the responsibility of the manager to ensure that designated timekeepers and certifying officials have been granted access to the appropriate time and leave units for their organizations.
- c. It is the responsibility of the manager to ensure that there is a timekeeper and certifying official on-site to process timecards.
- d. Designated timekeepers and certifying officials may need access to additional time and leave units (if not already provided). If additional access is needed, a new delegation of authority (DOA) should be submitted to the station's servicing payroll office. DOA's can be prepared in advance to help facilitate timesheet processing during a government shutdown.

**Timekeeper/Certifying Official's Role during a Government Shut-down:** The chart below lists the role of the timekeeper and certifying official during a government shut-down.

## Frequently Asked Questions for Shutdown Furlough

**Table 2: Role of the Timekeeper and Certifying Official During a Shutdown.**

Furlough Timeframe	Employee <i>NOT</i> Impacted by a Lapse of Appropriations and is Performing Funded Activities	Employee Performing Excepted Activities	Furloughed Employees (not allowed to work during the furlough period)
Furlough begins in the middle of a pay period	Business as usual. No changes in the way that timecards are processed.	<ol style="list-style-type: none"> <li>1. <b>On VATAS</b> timesheets record both pay and KE – Furlough (LWOP) as appropriate</li> <li>2. <b>For KE-Furlough time coded, but actual time worked:</b> Include the following free text code/comments in the remark field for each day the employee works: <b>Code:</b> ExEm <b>Remarks:</b> “Excepted – Employee worked from &lt;start time worked&gt; to &lt;stop time ended&gt;.”</li> <li>3. Timecards should be posted, certified and transmitted to DCPS as usual.</li> <li>4. <b>When the furlough ends timecards must be corrected to reflect time worked.</b></li> </ol>	<ol style="list-style-type: none"> <li>1. <b>On VATAS</b> timesheets record both pay and KE-Furlough (LWOP), as appropriate, on the timecard.</li> <li>2. <b>VATAS</b> timesheets should be posted, validated, and certified transmitted to DCPS as usual.</li> </ol>
Furlough covers any full pay period	Business as usual. No changes in the way that timecards are processed.	<ol style="list-style-type: none"> <li>1. <b>On VATAS</b> timesheets record KE-Furlough (LWOP) as appropriate</li> <li>2. <b>For KE-Furlough time coded, but actual time worked:</b> Include the following free text code/comments in the remark field for each day the employee works: <b>Code:</b> ExEm <b>Remarks:</b> “Excepted – Employee worked from &lt;start time worked&gt; to &lt;stop time ended&gt;.”</li> <li>3. Timecards should be posted, certified and transmitted to DCPS as usual.</li> <li>4. <b>When the furlough ends timecards must be corrected to reflect time worked.</b></li> </ol>	<ol style="list-style-type: none"> <li>5. <b>On VATAS</b> timesheets Record both pay and KE-Furlough (LWOP), as appropriate, on the timecard.</li> <li>1. <b>VATAS</b> timesheets should be posted, validated, and certified transmitted to DCPS as usual.</li> </ol>
Furlough ends in the middle of a pay period.	Business as usual. No changes in the way that timecards are processed.	<ol style="list-style-type: none"> <li>1. <b>On VATAS</b> timesheets record both pay and KE – Furlough (LWOP) as appropriate</li> <li>2. <b>For KE-Furlough time coded, but actual time worked:</b> Include the following free text code/comments in the remark field for each day the employee works: <b>Code:</b> ExEm <b>Remarks:</b> “Excepted – Employee worked from &lt;start time worked&gt; to &lt;stop time ended&gt;.”</li> <li>3. Timecards should be posted, certified and transmitted to DCPS as usual.</li> <li>4. <b>When the furlough ends timecards must be corrected to reflect time worked.</b></li> </ol>	<ol style="list-style-type: none"> <li>5. <b>On VATAS</b> timesheets record both pay and KE-Furlough (LWOP), as appropriate, on the timecard.</li> <li>6. <b>VATAS</b> timesheets should be posted, validated, and certified transmitted to DCPS as usual.</li> </ol>

### S. SES and Other Executive Positions

# Frequently Asked Questions for Shutdown Furlough

## 1. What about SES appointees?

Furloughs of SES career appointees (other than reemployed annuitants) are covered under 5 U.S.C. §3595(a) and 5 C.F.R. § 359(h). The regulations provide only for a single 30-calendar day advance written notice (which may be shortened or waived in the event of unforeseeable circumstances such as sudden emergencies requiring immediate curtailment of activities, or when furlough of employees is necessary to avoid violation of the Antideficiency Act), which must tell the appointee the reason for the furlough; the expected duration of the furlough and the effective dates; the basis for selecting the appointee when some but not all SES appointees in a given organizational unit are being furloughed; the location where the appointee may inspect the regulations and records pertinent to the action; the reason, if the notice period is less than 30 calendar days; for a probationer, the effect (if any) on the duration of the probationary period; and the appointee's appeal rights to the MSPB (if the employee believes OPM or agency regulations have not been correctly applied) including the time limit for the appeal and the MSPB office to which it should be sent. A career appointee may appeal a furlough of any length. Competitive procedures are required to select career appointees for any furlough of more than 30 calendar days (or 22 workdays).

An agency may furlough an SES noncareer or limited appointee or a reemployed annuitant holding a career appointment; there are no specific procedures prescribed in law or regulation for effecting such an action. Furlough of an SES noncareer or limited appointee or a reemployed annuitant holding a career SES appointment is not appealable to MSPB.

## 2. Are individuals appointed by the President subject to furlough?

This is a twofold test wherein the individual must be appointed by the President and their rate of pay must exceed the highest rate payable under 5 U.S.C. § 5332. Individuals appointed by the President, with or without Senate confirmation, who otherwise are not subject to 5 U.S.C. § 6301 and attendant regulations governing leave in the Federal service, are not subject to furlough. The salary of such a presidential appointee is an obligation incurred by the year, without consideration of hours of duty required. Thus, the presidential appointee cannot be placed in a non-duty, non-pay status. If a presidential appointee, however, chooses to be in a non-pay status, they may offer to return part of their salary to VA as a gift, or to the Treasury. To return funds to the VA, the appointee must make a written offer of the salary to the VA, and the Secretary must accept the offer under one of their gift acceptance authorities (appropriate authority determined on a case-by-case basis). Regardless of the presidential appointee's choice, their entire salary is recorded for tax purposes. The following exception must be noted: former career SES appointees who took appointments at level V of the Executive Schedule or higher and elected to retain SES leave benefits under 5 U.S.C. § 3392(c), are subject to furlough at the discretion of the agency.

Specifically, based on the Department of Justice opinion on this matter, there is authority to continue obligating funds for the salaries of the following employees:

An officer in the executive branch or in the government of the District of Columbia who is appointed by the President and whose rate of basic pay exceeds the highest rate

## Frequently Asked Questions for Shutdown Furlough

payable under 5 U.S.C. § 5332; (section 5332 refers to the GS; currently the maximum under the Washington, D.C. Locality Pay Table is \$183,500, the maximum for the GS Base Table is \$152,771 for FY 2023);

An officer in the executive branch or in the government of the District of Columbia who is designated by the President, except a postmaster, U.S. attorney, or U.S. Marshal;

“[S]uch officials are entitled to compensation based on their status rather than the hours they work, and the government is authorized by law to allow them to continue to work during a lapse in appropriations.” *Authority To Employ White House Office Personnel Exempt From The Annual And Sick Leave Act Under 5 U.S.C. § 6301(2)(X) And (Xi) During An Appropriations Lapse*, 0 (O.L.C.) (2011)

### **3. Are presidential appointees, Schedule C employees, and members of the SES covered by the RIF furlough procedures?**

An employee whose appointment must be confirmed by or made with the advice and consent of the Senate, is not covered by the Part 351 RIF procedures. All Schedule C employees are covered by Part 351 except those under appointments of one year or less who have less than one year of service. Career SES members are covered by separate furlough procedures in 5 C.F.R. § 359(h), which provides that an agency must use competitive procedures, based primarily on performance, in selecting SES career appointees for furloughs of more than 30 calendar days, or for more than 22 workdays if the furlough does not cover consecutive calendar days. In the event a RIF occurs, competitive procedures used must be made known to the SES members. The furlough of an SES noncareer or limited appointee or a reemployed annuitant holding a career SES appointment is not subject to 5 C.F.R. § 359(h).

### **4. What procedures and appeal rights are applicable for noncareer, limited term and limited emergency employees in the SES and reemployed annuitants holding career SES appointments?**

Noncareer, limited term, and limited emergency SES appointees and reemployed SES annuitants holding career appointments are not covered by 5 C.F.R. § 359(h), and they may be furloughed under agency designated procedures, which should include certain minimum features, e.g., whenever possible, a written notice at least one day before the furlough that states the reason for, duration of, and effective dates of the furlough.

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## **T. Contact Information**

For questions on the FAQ – Shutdown Furlough please contact

[ContingencyPlanning@va.gov](mailto:ContingencyPlanning@va.gov).

Employees should contact their servicing HRO and/or supervisor for information regarding furloughs. In addition, they should monitor [VA's website](http://va.gov) (va.gov), [OPM's website](http://opm.gov) (opm.gov) for information during furloughs.